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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	<b>CASE NO. 18-CR-390-VC</b>
	)	
Plaintiff,	)	United States' Sentencing Memorandum
	)	
v.	)	
	)	October 19, 2020
GREGORY JAMES CHRISMAN,	)	2:00 p.m.
	)	
Defendant.	)	

Defendant Gregory James Chrisman pled guilty to two counts of making false statements, in violation of 18 U.S.C. § 1001. The United States respectfully requests that the Court impose a non-custodial sentence of two years' probation. This sentence will provide adequate general deterrence and promote respect for the law, but also recognizes Chrisman's two decades of service to the United States in the Air Force Reserves.

**I. Background**

Chrisman previously worked as a commercial pilot, and this prosecution arises from false statements that Chrisman made on medical certifications submitted to the Federal Aviation Administration (FAA). These certifications are known as Form 8500-8s.

1       A. The Airman Medical Certificate (Form 8500-8)

2       In order to fly, commercial pilots such as Chrisman must obtain an “Airman Medical Certificate,  
3       which demonstrates that the airman meets the FAA’s airman medical standards.” ECF No. 35 at 3, 4.  
4       (Declaration of FAA Southern Regional Flight Surgeon Susan Northrup, MD). The airmen medical  
5       certification requirement was developed “to reduce the risk of an aircraft accident or incident by  
6       identifying . . . medical, physical, and/or mental conditions that could potentially impair or incapacitate  
7       the pilot.” *Id.* at 4.

8       Applicants for an Airman Medical Certificate begin the medical certification process by  
9       completing a FAA Form 8500-8.” *Id.* The Form 8500-8 requires an applicant to accurately describe their  
10      medical history. *Id.* at 5. In particular, “Item 18 lists a series of specific medical conditions and asks the  
11      applicant whether he or she has ever been diagnosed with any of the conditions.” *Id.* at 5. Item 18 “also  
12      asks whether pilots receive medical disability benefits.” *Id.*

13      After submitting the Form 8500-8, the applicant must then meet with an Aviation Medical  
14      Examiner (AME), who is “a civilian physician designated and trained by the FAA to screen individuals  
15      for fitness to perform aviation duties.” *Id.* at 3. The AME “reviews the medical information and medical  
16      history that the applicant has submitted” on their Form 8500-8, including the “airman’s prior history,  
17      demographics, medications, and previous medical visits.” *Id.* at 3. The AME then “uses the history  
18      provided by the applicant and the results from the physical examination to make a medical  
19      determination as to whether the applicant is qualified to receive the airman medical certificate.” *Id.* at 4.

20      The FAA’s medical certification process is based on the “honor system,” and the FAA “relies on  
21      the truthfulness and integrity of applicants.” *Id.* “If an applicant is untruthful or withholds medical  
22      information, this affects decision-making and may lead the AME and the FAA to make an inappropriate  
23      certification decision thereby issuing a certificate to an applicant who is not medically qualified.” *Id.* at  
24      4.

25      In August 2018, Chrisman was charged with two counts of making false statements, in violation  
26      of 18 U.S.C. § 1001(a)(2), for claims made on his December 10, 2017 and June 24, 2018 Form 8500-8s.  
27      ECF No. 1. As relevant here, the indictment alleged that Chrisman falsely certified that he had never  
28      received any medical disability benefits on both Form 8500-8s, even though he had been receiving

1 medical disability benefits from the Department of Veterans Affairs since 2011. ECF No. 1 at 4.

2 B. Chrisman's Post-Indictment Conduct

3 In December 2018—after being charged—Chrisman visited an AME named Dr. William Brath.  
 4 Dr. Brath reviewed Chrisman's Form 8500-8s between at least 2012 and 2017.<sup>1</sup> At that time, Chrisman  
 5 told Dr. Brath that he had been receiving disability benefits from the Department of Veterans Affairs.  
 6 ECF No. 59-2 at 2 (FAA OIG Memorandum of Interview, Dr. William Brath). "Until then, [Dr.] Brath  
 7 had no idea Chrisman was receiving VA disability benefits." *Id.* at 2–3. Despite this lack of knowledge,  
 8 Chrisman then asked Dr. Brath to write a letter falsely stating that Dr. Brath had already known about  
 9 the benefits, and also falsely stating that Dr. Brath had advised Chrisman not to report receiving those  
 10 benefits to the FAA. Exhibit 1.

11 Chrisman subsequently followed up by e-mail. On January 7, 2019, Chrisman asked if Dr. Brath  
 12 would be "willing to write a letter on [his] behalf." ECF No. 59-3 at 2. The "purpose" of the letter,  
 13 according to Chrisman, was to "help clarify that, although [he] did not fill out the FAA 8500-8 to the  
 14 VA's satisfaction, the FAA has been informed on [his] medical status." *Id.*

15 Dr. Brath did not write the letter that Chrisman wanted. If Dr. Brath had, however, the letter  
 16 would have been false. The record demonstrates Chrisman knew that he was asking Dr. Brath to write a  
 17 false letter. *First*, on December 3, 2018—while Chrisman was still in the process of seeking Dr. Brath's  
 18 assistance—Chrisman wrote a letter to the FAA in which he tried to explain his failure to report the  
 19 medical disability benefits. In the letter, Chrisman made no mention of Dr. Brath's supposed advice.  
 20 Instead, he wrote that although he "began receiving Veterans administration Disability Benefits in  
 21 October 2011," he "neglected to" report those benefits, and never corrected his error because he "let fear  
 22 overtake" him. Exhibit 2.

23 *Second*, in his application to plead guilty, Mr. Chrisman stated that, at the time he falsely  
 24 certified he had never received medical disability benefits, he "knew he was receiving service-related  
 25 compensation which is a form of medical disability benefits from the U.S. Department of Veterans  
 26 Affairs" and knew that his false certifications were "unlawful." ECF No. 62-1 at 2. This too is contrary  
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28 <sup>1</sup> On those earlier Form 8500-8s, Chrisman—just as he did for the 2017 and 2018 Form 8500-8s—falsely stated that he had never received medical disability benefits.

to the letter that Chrisman wanted Dr. Brath to write.

*C. Chrisman's guilty plea*

On November 14, 2019, Chrisman entered an open guilty plea to the two false statement charges for which he is being sentenced.

**II. Guidelines**

The United States agrees with the United States Sentencing Guidelines (USSG) calculation set out in the PSR.

	<b>USSG Section</b>	<b>Level/Points</b>
Base offense level	§ 2B1.1(a)(2)	6
Obstruction adjustment	§ 3C1.1	+2
Acceptance of Responsibility	§ 3E1.1	0
<b>Adjusted Offense Level</b>		<b>8</b>

This Court should overrule Chrisman's objections to the application of USSG §§ 3C1.1 and 3E1.1.

*A. The Obstruction Adjustment (USSG § 3C1.1) Applies*

USSG § 3C1.1 provides for a two-level upward adjustment if "the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and . . . the obstructive conduct related to . . . the defendant's offense of conviction and any relevant conduct." As relevant here, the commentary to the Guideline includes the following examples of conduct that can trigger this enhancement: "producing or attempting to produce a false, altered, or counterfeit document or record during an official investigation or judicial proceeding" and "unlawfully influencing . . . a witness . . . or attempting to do so." USSG § 3C1.1, comment., (n.)(4).

The USSG § 3C1.1 enhancement applies because after his indictment in this case, Chrisman

visited Dr. Brath, and tried to convince Dr. Brath to help him manufacture a false defense—specifically, that Mr. Chrisman had acted on Dr. Brath’s advice in making the false statements described above.

The false statement charges that Chrisman faced required the United States to prove that he acted “willfully”: “that is, the defendant acted deliberately and with knowledge both that the statement was untrue and that his or her conduct was unlawful.” Ninth Circuit Model Jury Instruction (2010) No. 8.73. The letter that Chrisman wanted Dr. Brath to write could have provided a defense in this case: if Chrisman could convince the jury that he had been acting on Dr. Brath’s advice when he made false statements to the FAA, this would undercut the United States’ effort to show that Chrisman knew that his statements were untrue and that he knew that his conduct was unlawful.

#### *B. Chrisman Is Not Entitled to Acceptance of Responsibility*

The commentary to USSG § 3E1.1 says that “[c]onduct resulting in an enhancement under § 3C1.1 (Obstructing or Impeding the Administration of Justice) ordinarily indicates that the defendant has not accepted responsibility for his criminal conduct.” USSG § 3E1.1, comment. (n.)(4). Because Mr. Chrisman’s conduct results in an enhancement under USSG § 3C1.1, he is not entitled to, and should not receive, a downward adjustment for the acceptance of responsibility under USSG § 3E1.1.

The Guidelines provide for an exception to this general rule if Chrisman’s case is “extraordinary.” USSG § 3E1.1, comment. (n.)(4) (“There may, however, be extraordinary cases in which adjustments under both §§ 3C1.1 and 3E1.1 may apply.”).

Chrisman’s circumstances are not extraordinary. He did not abandon his obstructive scheme of his own accord. Rather, the scheme was foiled because Dr. Brath refused to play along. And Chrisman persisted in maintaining his innocence for the false statement charges until the United States uncovered this scheme. Under these circumstances, Chrisman’s conduct is “inconsistent with [his] acceptance of responsibility.” *United States v. Hopper*, 27 F.3d 378, 383 (9th Cir. 1994).

### **III. Recommendation**

This is a serious offense, and one that goes to the integrity of the FAA’s process for safeguarding airline passengers. Chrisman’s false statements deprived the FAA of the ability to make accurate decisions about the risks that Chrisman posed during flight. ECF No. 35 at 2.

For the reasons set out in the PSR, however, the United States concurs with Probation that a non-

1 custodial sentence is appropriate. First, Chrisman's nearly two decades of service to the United States  
2 through the Air Force Reserves merits consideration. Second, given the nature of the offense and  
3 Chrisman's current employment status (he is unemployed and has lost his pilot's license), a custodial  
4 sentence is not necessary to provide adequate deterrence. 18 U.S.C. § 3553(a). For these reasons, the  
5 United States respectfully requests impose a two-year term of probation.

6  
7 DATED: September 15, 2020

Respectfully submitted,

8 DAVID L. ANDERSON  
9 United States Attorney

10 /s/ Ajay Krishnamurthy  
11 AJAY KRISHNAMURTHY  
12 DAVID WARD  
13 Assistant United States Attorneys  
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